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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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 NATURAL RESOURCES DEFENSE COUNCIL, :  
 INC., :  
 :  
 Plaintiff, :  
 :  
 v. : **ANSWER**  
 :  
 UNITED STATES ENVIRONMENTAL : 08 Civ. 2443 (DLC)  
 PROTECTION AGENCY, :  
 : **ELECTRONICALLY FILED**  
 Defendant. :  
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Defendant, the Environmental Protection Agency (“EPA”), by its attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, respectfully answers plaintiff’s complaint on information and belief as follows:

1. This paragraph sets forth plaintiff’s characterization of their claims, to which no response is required.
2. Deny except to admit that in 1992 EPA published a Notice of Intent to Cancel ethylene bisdithiocarbamate (EBDC) in the Federal Register and the notice speaks for itself. *See* 57 Fed. Reg. 7,484 (Mar. 2, 1992).
3. Deny except to admit that on July 11, 2007, in response to a petition filed by a coalition of EBDC registrants to reduce the length of the required PHI from 14 days to 3 days,

EPA published in the Federal Register a notice of its determination that the petition has merit and a notice of an opportunity for a hearing on the petition.

4. Deny except to admit that plaintiff submitted a FOIA request to EPA dated December 13, 2007, which was not received by EPA Headquarters' FOIA Office until December 14, 2007. EPA respectfully refers the Court to the request for a complete and accurate recitation of its contents.

5. Deny.

6. The first sentence sets forth a legal conclusion to which no response is required. To the extent a response is required, deny. Admit the remainder of the paragraph.

7. This paragraph sets forth plaintiff's characterization of the relief sought in this action, to which no response is required. To the extent a response is deemed required, deny that plaintiff is entitled to the relief sought.

8. This paragraph sets forth plaintiff's statement of jurisdiction and venue, to which no response is required.

9. Deny knowledge or information sufficient to form a belief as to the truth of this paragraph.

10. Deny knowledge or information sufficient to form a belief as to the truth of this paragraph.

11. The first sentence sets forth plaintiff's characterization of this action, to which no response is required. Deny the remainder of the paragraph.

12. Admit.

13. This paragraph consists of plaintiff's characterization of provisions of the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* ("FOIA"), to which no response is required. EPA respectfully refers the Court to the cited provisions for a complete and accurate statement of their contents.

14. EPA incorporates by reference its answer to paragraph 13.

15. EPA incorporates by reference its answer to paragraph 13.

16. EPA incorporates by reference its answer to paragraph 13.

17. EPA incorporates by reference its answer to paragraph 13.

18. EPA incorporates by reference its answer to paragraph 13.

19. Deny except to admit that EPA published the referenced notice on March 2, 1992, and the notice speaks for itself.

20. Deny except to admit that in 1996 an Accelerated Decision and Order was issued by an EPA Administrative Law Judge to implement a Settlement Agreement between EPA and the American Food Security Coalition and that Order speaks for itself. *See* Accelerated Decision and Order and Settlement Agreement, in the Matter of In Re American Food Security Coalition, *et al.*, FIFRA Docket Nos. 646, *et al.* (Feb. 1, 1996).

21. Admit.

22. Deny except to admit that EPA published the referenced notice on July 11, 2007, and the notice speaks for itself.

23. Deny except to admit on December 14, 2007, EPA received a FOIA request from plaintiff. EPA respectfully refers the Court to the request for a complete and accurate recitation of its contents.

24. EPA incorporates by reference its answer to paragraph 23.
25. EPA incorporates by reference its answer to paragraph 23.
26. Admit the first sentence. Deny the remaining allegations of this paragraph and respectfully refer the Court to the referenced letter for a complete and accurate recitation of its contents.
27. Admit the first sentence. Deny the second sentence and respectfully refer the Court to the administrative appeal for a complete and accurate recitation of its contents.
28. Admit.
29. EPA incorporates by reference its answer to paragraph 23.
30. Deny that plaintiff is requesting only records that are not already publicly available, except to admit that plaintiff has requested that the EPA “identify” any responsive records that are publicly available while producing all other responsive documents. EPA further denies that responsive documents that are not already publicly available are, for that reason, “likely to be meaningfully informative about EPA’s administration of FIFRA with respect to pesticide products containing EBDC.”
31. Deny. EPA avers that there is much “information about the process of EPA’s administration of FIFRA with respect to pesticide products containing EBDC” that is not likely to contribute to the public’s understanding of EPA operations and activities.
32. Deny knowledge or information sufficient to form a belief as to the truth of this paragraph.
33. Deny. EPA avers that plaintiff’s request is not limited to documents bearing on the 14-day PHI for EBDC use on potatoes.

34. Deny knowledge or information sufficient to form a belief as to the truth of this paragraph.

35. Deny. EPA avers that it was obligated to respond to plaintiff's request within 20 business days (excluding federal holidays) from when it was *received* on December 14, 2007 – *i.e.*, on or before January 15, 2008. (EPA avers that December 24, 2007 was designated a federal holiday by Executive Order.)

36. Deny except to admit that EPA responded to plaintiff's FOIA request by letter on January 15, 2008. EPA respectfully refers the Court to the letter for a complete and accurate recitation of its contents.

37. Admit the first sentence. Deny the second sentence. EPA avers that the determination made in EPA's December 28, 2007 letter was subject to administrative appeal.

38. Admit. EPA avers that, by letters dated December 13, 2007 and January 28, 2008, plaintiff acceded to production on a rolling basis.

39. EPA incorporates by reference its answers to paragraphs 1-38.

40. Deny.

41. Deny.

42. Deny.

The remaining paragraph sets forth plaintiff's prayer for relief, to which no response is required. To the extent a response is deemed required, EPA denies that plaintiff is entitled to the relief sought.

WHEREFORE, EPA demands judgment dismissing the complaint and granting such further relief as this Court deems just, including costs and disbursements.

Dated: New York, New York  
April 10, 2008

Respectfully submitted,

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